

REMARKS

Reconsideration of the present application is respectfully requested. Claim 34 has been amended, while claims 37 and 38 have been added. Claims 34 – 38 are currently pending.

Rejections based on 35 U.S.C. § 101 and 112

Claims 34 – 36 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter, *i.e.*, a non-functional data structure. Similarly, claims 34 – 36 stand rejected under 35 U.S.C. §112, second paragraph, as omitting essential elements. Applicants have amended independent claim 34 in response to these rejections. Claim 34 now recites a “computer-readable medium having stored thereon computer-executable instructions for performing a method for utilizing a data structure for transmitting data between a sender and a receiver.” Applicants respectfully submit that claims 34 – 36 are now directed to statutory subject matter and now include all essential elements. As such, Applicants respectfully request that the rejections under 35 U.S.C. §§ 101 and 112 be withdrawn.

Rejections based on 35 U.S.C. § 102

Claims 34 – 36 stand rejected under 35 U.S.C. 102 as being anticipated by Huth, U.S. Patent No. 6,519,263 (“Huth”). Applicants have amended independent claim 34 in response to this rejection. Applicants respectfully submit that Huth does not teach or suggest “inserting into said second data field interval data representing a time interval for subsequent transmission of subject data from the sender to the receiver, wherein said interval data is generated based on a function of a current level of ambient network traffic,” as required by amended independent claim 34 and new independent claim 37.

Huth teaches a process for transmitting data packets between devices using predefinable priority classes. Abstract. In a network environment, it often may be necessary to

prefer certain data flows over others. Col. 1. ll. 19 – 20. While traditional communication protocols do not utilize such preferences, Huth allows the data packets to be transmitted according to an assigned priority. Col. 2. ll. 11 – 23. For example, data packets with a relatively high priority are preferred over data packets with a relatively low priority. *Id.* Using Huth's method, "it is possible to prioritize the data packets, for example depending on the type of the data stream to be transmitted." Col. 2. ll. 16 – 28. In this way, Huth ensures the required quality for data packets that require a higher priority because of quality requirements relating to, *e.g.*, real-time requirements during transmission.

Huth transmits packets based on priority classifications, not based on a function of a current level of ambient network traffic. Nowhere does Huth contemplate the transmitting of interval data, along with subject data, where the "interval data is generated based on a function of a current level of ambient network traffic," as required by independent claims 34 and 37. Thus, Applicants respectfully submit that independent claims 34 and 37 are in condition for allowance. Applicants further submit that dependent claims 35 and 36, which depend from claim 34, are in condition for allowance for at least the same reasons discussed above with respect to claim 34. Applicants further submit that dependent claim 38, which depends from claim 37, is in condition for allowance for at least the same reasons discussed above with respect to claim 37.

Conclusion

For the reasons stated above, claims 34 – 38 are now in condition for allowance. If any issues remain which would prevent issuance of this application, the Examiner is urged to contact the undersigned prior to issuing a subsequent action. The Commissioner is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,

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